EB-2011-0277

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O. 1998, c.15 (Schedule B);

AND IN THE MATTER OF an application by Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2012.

FINAL ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

INTRODUCTION:

1. On September 1, 2011, Enbridge Gas Distribution ("EGD") applied to the Ontario Energy Board ("Board") for approval of rates the distribution, transmission and storage of natural gas effective January 1, 2012. EGD's rates for 2012 are being set under the multi-year Incentive Regulation Mechanism approved by the Board in 2007. This is the fifth year of the plan which set rates on the basis of a revenue per customer cap.

2. On November 22 and November 23, a Settlement Conference was convened and parties reached a Settlement Agreement on the majority of the issues. The Consumers Council of Canada ("Council") participated in the Settlement Conference and is a signatory to the Settlement Agreement. These are the Council's submissions on the following unsettled issues:

- Issue 10 - 2012 Pension Funding
- Issue 11 - 2012 Cross Bores/Sewer Laterals
- Issue 13 - 2012 Pension Funding Variance Account
- Issue 14 - 2012 Cross Bores/Sewer Laterals Variance Account
- Issue 15 - Transition Impact of Accounting Changes Deferral Account

PENSION FUNDING (Issues 10 and 13)

3. EGD's evidence is that it will be required to contribute, in 2012, the current year's service cost to the pension plan for its employees. The amount is estimated to be $16.6 million and will be finalized by Mercer within the next month (Tr. Vol. 1, p. 128). EGD argues that this cost has met the prescribed Z-factor criteria established as part of its IRM plan. In addition, EGD is seeking approval of a variance account to record the difference between the estimated amount of $16.6 million and the actual amount that will be contributed to the plans is 2012.

4. When EGD's IRM plan began the Financial Services Commission of Ontario ("FSCO") required a valuation for all registered pension plans to be filed every three years. A valuation was required for EGD on December 31, 2009. That valuation showed the plan to be a significant surplus position, therefore requiring no further contributions. The next valuation was due December 31, 2012 at the end of the IRM plan.

5. On June 23, 2009, FSCO established a new requirement for those pension sponsors on a contribution holiday to file an annual actuarial cost certificate to justify the continuation of the holiday. EGD retained Mercer to estimate the projected December 2011 financial position of the plan based on economic conditions as at August 31, 2011 (Ex. B/T2/S5/Appendix B). Mercer concluded that the plan would be in a deficit position as at December 31, 2011. EGD's evidence is that it will not be able to file an actuarial cost certificate showing a surplus in the plan at December 31, 2011 meaning it will be required to contribute the 2012 service costs (Argument in Chief, p. 8).

6. EGD has indicated that the main contributors to the deficiency position in 2012 are that contributions were not required and that the pension assets' performance did not keep up with the increase in the pension liabilities increase. In addition, the pension liabilities have increased significantly in the last year due to weak equity markets and declining interest rates (Tr. Vol. 1, p. 93). As noted by Mercer, the reason the plan is in deficit now compared to a year ago is mainly because interest rates have declined very significantly (Tr. Vol. 2, p. 112).

7. The Council urges the Board to reject EGD's request for Z-factor relief for its 2012 pension service costs. In order to qualify for Z-factor relief the "event" must meet the

Board-established Z-factor criteria. From the Council's perspective the requirement to contribute to the 2012 service costs does not meet the following criteria:

> The cost must be beyond the control of Enbridge's management and is not a risk in respect of which a prudent utility would take mitigation steps.

8. In addition, given EGD's position regarding interest rates generally, namely that changes in interest rates do not qualify for Z-factor treatment, it would be unfair to allow for Z-factor treatment with respect to the pension costs given the primary driver for the deficit is declining interest rates.

9. Pension cost are a normal cost of doing business. In good economic times the plans perform well and in bad economic times the reverse is true. Within EGD there is a pension administration committee. The mandate of that committee is day-to-day management, looking at plan design, plan elements and plan performance. This committee reports to a pension committee at Enbridge Inc. which manages the plan on behalf of EGD (Tr. Vol. 1, p. 120). EGD pays EI for managing the plan. In 2011 the fees paid by EGD for pension administration were $300,000 (Ex. J1.3). EGD is ultimately responsible for the management of its pension and its overall performance. It is fair to say that had the plan been managed differently it might not currently be in a deficit position.

10. Another factor within the control of EGD's management was the decision in 2001 to change the requirement for employees to contribute to the plan. EGD has acknowledged that this is an option, but it has decided not to require such contributions (Tr. Vol. 1, pp 175-177). Although it may require a change to the terms of the plan it is clearly an option for EGD, and always has been an option.

11. The Council submits that EGD has not met the test required for Z-factor treatment. The administration of its pension plan is clearly within the control of management, as is every other component of employee compensation. EGD has made a decision to pay its parent Enbridge Inc. to administer the plan. The performance may be impacted by economic conditions, but it is also impacted by the way in which it has been managed. In addition, EGD made a decision on 2001 to end employee contributions. That decision could have impacted the level of the deficit, or could have eliminated it entirely.

12. EGD has acknowledged that the deficit is primarily the result of changes in interest rates (Tr. Vol. 2, p. 112). If the Board accepts that EGD is entitled to recover the service costs from ratepayers, it follows that ratepayers should also benefit from reductions in the cost of EGD's debt. Over the IRM plan those reductions have been significant (Ex. I3.4). In 2012 the variance from the costs embedded in rates is approximately $22 million. To allow EGD to recover amounts to service the pension plan from ratepayers, and not give the ratepayers the benefit of reduced debt costs, would essentially be cherry-picking. The Council urges the Board to reject EGD's request for Z-factor treatment of the 2012 service costs. This type of cost was not what was envisioned as a Z-factor when the IRM plan was established.

CROSS BORES/SEWER LATERALS (Issues 11 and 14):

13. EGD is seeking approval to establish a variance account to record the 2012 revenue requirement associated with its cross bore safety program. EGD argues that it has met all five of the Z-factor criteria set out in the IRM Settlement Agreement (Argument-in-Chief, p. 18).

14. The Council submits that, with respect to cross bores, there was not an "event" that triggered an unexpected cost that is outside the control of management. EGD became aware of the risk of cross bores in 2004, when its affiliate St. Lawrence Gas experienced a cross bore incident in its franchise area (Ex. B/T2/S6/pp. 4-5). In addition, EGD has admitted that, despite the Technical Standards and Safety Authority ("TSSA") Directive in August 2011, it was already undertaking a Sewer Lateral Initiative (beginning in 2008) addressing many of the issues related to cross bores (Ex. B/T2/S6/p. 6). The TSSA Directive did not mandate action by EGD.

15. The Council submits that this issue is not complex. EGD as a matter of course has an obligation to run its system in a way that maximizes safety and reliability. There are costs embedded in rates associated with managing the system and identifying and addressing operational risks that may arise . EGD's evidence is that it has a 2012 budget of over $40 million in capital and operating and maintenance costs related to its pipeline integrity program (Ex. J2.2). To single out one aspect of that program for Z-factor treatment is simply unfair to its ratepayers. EGD's management has chosen to ramp up its efforts regarding cross bores, but there are other aspects of its business that may require less attention (and expenditures) relative to 2007. In the context of an IRM some aspects of the business change. Costs in certain categories

may go up, and other costs may go down. Overall, it is up to the utility to manage those changes within the revenue requirement produced by the IRM formula.

16. As a matter of principle, the Board should limit, to the extent possible the creation of deferral and variance accounts. In this case EGD has not demonstrated that the 2012 costs associated with its cross bore safety program qualify as a Z-factor.

TRANSITION TO USGAAP DEFERRAL ACCOUNT (Issue 15):

17. EGD is seeking to establish the 2012 Transition Impact of Accounting Changes Deferral Account ("2012 TIACDA") in order to recognize and record the financial impacts that will occur in relation to Enbridge's required transition away from Canadian Generally Accepted Accounting Principles. EGD is applying in its 2013 rate proceeding for approval to move to United States Generally Accepted Accounting Principles ("USGAAP").

18. The Council is not opposed to the establishment of the account if, in fact, it is required for regulatory purposes. If, however, it is not required the Council questions why it should be approved by the Board. EGD's evidence is that tracking the differences between CGAAP and USGAAP can be done outside of its regulatory accounting procedures. EGD has also indicated that the account is not required for any 2012 ratemaking purpose (Tr. Vol. 2, p. 74). The Council urges EGD to explain, in its reply argument, why the account is "required" given its evidence that there appears to be no ratemaking implications for 2012.

COSTS:

19. The Council requests that it be awarded 100% of its reasonably incurred costs for participating in this proceeding.

All of which is respectfully submitted.

14/02/2012